

1 CITY-COUNTY OF MONTGOMERY

2 PERSONNEL BOARD HEARING

3
4
5 IN RE APPEAL HEARING FOR:

6 L. M. HARTWELL,

7 Employee.

8
9 CITY-COUNTY OF MONTGOMERY

10 PERSONNEL DEPARTMENT

11 27 Madison Avenue,

12 Montgomery, Alabama 36101

13 March 14, 2006

14 5 p.m.

15
16 BEFORE THE PERSONNEL BOARD:

17 Benita Froemming, Chairman

18 Charles B. Paterson

19 Johnny Baker

20
21
22
23 Taken by: SELAH M. DRYER, CSR

ORIGINAL

S T I P U L A T I O N

IT IS STIPULATED AND AGREED by and between the parties through their respective counsel that the hearing of L. M. HARTWELL, may be taken before Selah M. Dryer, Notary Public, State at Large, at the City-County of Montgomery Personnel Department, 27 Madison Avenue, Montgomery, Alabama 36101-1111, on March 14, 2006, commencing at approximately 5 p.m.

IT IS FURTHER STIPULATED AND AGREED that the signature to and the reading of the hearing by the witnesses is waived, the hearing to have the same force and effect as if full compliance had been had with all laws and rules of Court relating to the taking of hearings.

IT IS FURTHER STIPULATED AND AGREED that it shall not be necessary for any objections to be made by counsel to any questions, except as to form or leading questions, and that counsel for the parties may make objections and assign

1 grounds at the time of trial or at the
2 time said hearing is offered in evidence,
3 or prior thereto.

4 In accordance with Rule
5 5(d) of the Alabama Rules of Civil
6 Procedure, as amended, effective May 15,
7 1988, I, Selah M. Dryer, am hereby
8 delivering to Wallace Mills, City
9 Attorney, the original transcript of the
10 oral testimony taken April 5, 2005, along
11 with exhibits.

12 Please be advised that this is the
13 same and not retained by the Court
14 Reporter, nor filed with the Court.

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A P P E A R A N C E S

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ATTORNEY FOR THE EMPLOYEE(S):

J. Bernard Brannan, Jr., Esq.

THE BRANNAN LAW FIRM

602 South Hull Street

Montgomery, Alabama 36104

1 I, Selah M. Dryer, a Notary Public
2 for the State of Alabama at Large, acting
3 as Commissioner, certify that on this
4 date, pursuant to the Alabama Rules of
5 Civil Procedure, and the foregoing
6 stipulation of counsel, there came before
7 the Board at the City-County of Montgomery
8 Personnel Department, 27 Madison Avenue,
9 Montgomery, Alabama 36101-1111,
10 commencing at approximately 5 p.m. on
11 March 14, 2006, L. M. HARTWELL, witness in
12 the above cause, for oral examination,
13 whereupon the following proceedings were
14 had:

15
16 MS. FROEMMING: Thank you
17 for coming.

18 My name is Benita Froemming.
19 I'm Chairman of the Personnel Board and to
20 my right is Johnny Baker and to my left is
21 Charlie Paterson.

22 Two members of the Board
23 constitute a forum; but tonight we have

1 all three, so it's a full house.

2 When an employee has been
3 dismissed or demoted, the burden of proof
4 falls on the City. And in all other types
5 of hearings the burden is on the
6 employee.

7 All testimony is given under
8 oath in a discharge case. The employee
9 cannot be compelled to testify, but if he
10 takes the stand voluntarily he may be
11 cross-examined as to any relevant matter.

12 This hearing is informal and
13 need not be conducted according to
14 technical rules relating to evidence and
15 witnesses. And all relevant evidence will
16 be admitted, including hearsay.

17 Parties are requested to
18 refrain from presenting repetitious or
19 irrelevant evidence. And the Board
20 reserves the right to exclude witnesses
21 not under examination and will do so at
22 the request of either party.

23 Would you like to invoke the

1 rule?

2 MR. BRANNAN: We would.

3 MR. MILLS: Yes, ma'am.

4 MS. FROEMMING: At this
5 point in time anybody who's going to
6 testify, please stand and raise your right
7 hand. And if you would, would you please
8 swear them in?

9 COURT REPORTER: Yes.

10 (Witnesses sworn.)

11 MS. FROEMMING: Mr. Mills
12 and Mr. Brannan, would you like to make
13 opening remarks?

14 MR. MILLS: Do you want
15 to, Berney?

16 MR. BRANNAN: I think we
17 can put on the evidence about as fast as
18 anything.

19 MS. FROEMMING: All right.
20 Regarding witnesses that we have listed,
21 we just want to make sure that -- and we
22 have mentioned this in the past -- if any
23 of this attests to the character of the

1 defendant -- if you have a large number --
2 that are going to do that, one would
3 suffice.

4 MR. BRANNAN: That's not
5 what we will be calling him for.

6 MS. FROEMMING: Okay. We
7 just want to make sure on that. All
8 right, call your first witness.

9 MR. MILLS: We call
10 Assistant Chief Carl Walker.

11

12 ASSISTANT CHIEF CARL WALKER,
13 being first duly sworn, was examined and
14 testified as follows:

15

16 DIRECT EXAMINATION BY MR. MILLS:

17 Q. Chief, will you state your
18 name for the Board, please.

19 A. I am Carl Edward Walker.

20 Q. Do you work for the Montgomery
21 Fire Department?

22 A. Yes, sir.

23 Q. Were you sworn earlier?

1 A. Yes, I was.

2 Q. What is your rank with the
3 Montgomery Fire Department.

4 A. I am the assistant fire chief
5 of the Montgomery Fire Department.

6 Q. Are you in charge of any
7 particular division?

8 A. Yes, I am.

9 Q. Which division?

10 A. I am the supervisor of Fire
11 Suppression Division.

12 Q. And does Firefighter Hartwell
13 work for you in that division?

14 A. Yes, sir.

15 Q. Did you have occasion to
16 recommend disciplinary action beginning in
17 August of 2005 against then Sergeant
18 Hartwell?

19 A. Yes, I did.

20 Q. Will you tell the Board what
21 charges you brought against Mr. Hartwell?

22 A. The charges that I brought
23 against Sergeant Hartwell at the time was

1 a recommendation to Deputy Chief Jordan
2 from me. The recommendation was for
3 disciplinary action based upon a chain of
4 events involving Sergeant Hartwell at the
5 time. The first being a claim of being
6 sick while on duty. Secondly, refusing to
7 bring a return-to-duty doctor's
8 certificate, violating a chain of command
9 through written communications, and making
10 false statements claiming bias and
11 mistreatment by District Chief Kelley
12 Gordon.

13 Q. What was your recommendation
14 that the punishment against Firefighter
15 Hartwell be?

16 A. My recommendation was demotion
17 from the rank of sergeant to firefighter.

18 Q. Now tell the Board, if you
19 will, what the difference is between
20 sergeant and firefighter in terms of their
21 duties?

22 A. Looking at the sergeant
23 duties, the sergeant duties -- it's

1 classified as sergeant slash engineer,
2 which means he is an apparatus operator
3 and he is a working supervisor, which
4 means he supervises two to three
5 firefighters that are beneath him.

6 Q. What is the pay difference
7 between sergeant and firefighter because
8 of this demotion?

9 A. I believe it's about \$30.

10 Q. Do you think that's per pay
11 period?

12 A. And I think it -- it's
13 probably pay period. At the most, it
14 could be broken into \$15 per pay period.

15 Q. Was it your intention to take
16 away his money or what was the intention
17 behind the demotion?

18 A. The intention was to demote
19 him from the rank of sergeant and not to
20 decrease his pay -- you wouldn't
21 normally.

22 Q. Does the firefighter have the
23 same supervisory responsibility that a

1 sergeant has?

2 A. No, sir.

3 Q. So if I understand it right,
4 he's been charged with refusing to obey an
5 order?

6 A. Yes, sir.

7 Q. With being disrespectful to a
8 superior?

9 A. That's correct.

10 Q. Violating the chain of
11 command?

12 A. Yes, sir.

13 Q. And making untrue and false
14 accusations against a superior officer?

15 A. That's correct.

16 Q. I'm going to show you a
17 document that I believe was attached to
18 one of the charging documents that you
19 prepared. I've marked this as No. 1 on
20 the top corner, Exhibit 1. Is that the
21 document that you attached to the charging
22 documents in this case?

23 (WHEREUPON, a document was

1 marked as Exhibit No. 1 and is
2 attached to the original
3 transcript.)

4 A. Yes, sir, it is.

5 Q. Does it outline the charges
6 that Sergeant Hartwell, at the time, the
7 rules violations that he was charged with?

8 A. Yes, sir.

9 Q. Specifically it enumerates in
10 Article 11, Section 1100 several
11 subsections: A, B and C.

12 A. Yes.

13 Q. And several subsections of
14 1101?

15 A. Yes, sir.

16 Q. And 1102?

17 A. Yes, sir.

18 Q. And finally 1103; is that
19 right?

20 A. Yes, sir.

21 Q. And at the bottom it says
22 prior record also considered?

23 A. Yes, sir.

1 Q. Tell the Board if you will,
2 Chief, what happened. I believe all of
3 this began on August the 4th; is that
4 correct?

5 A. Yes.

6 Q. Tell the Board, if you will in
7 your own words, what happened on August
8 the 4th and how these events came to
9 pass.

10 A. If I could sum up the day of
11 August 4th, Sergeant Hartwell at the time
12 was hired, as we term it, to work
13 overtime. Which means he had worked a
14 shift, his shift prior, and he was hired
15 the next following day of the next shift
16 to work an overtime shift. To kind of sum
17 it up, later on in the day when he found
18 out that he had to pull a detail at
19 another station -- and that station had a
20 lot of work to be done -- he claimed to be
21 sick. Prior to telling his officer that
22 he was sick and that he needed to go home,
23 he had that morning revealed to some

1 firefighters at the drill field that if he
2 had to go on detail at Station Three that
3 he would claim that he was sick -- that he
4 would be sick -- that he would claim that
5 he would be sick and that he would go
6 home -- and he was heard by some fellow
7 firefighters at the drill field when he
8 made that statement.

9 Q. Who was the captain for whom
10 he was going to work that day, August the
11 4th?

12 A. He was going to work at a
13 station where Lieutenant Donny Adams was
14 the officer in charge.

15 Q. Had Captain Burkett arranged
16 for Hartwell to work that day?

17 A. Yes, sir. Captain Burkett was
18 the commanding supervisor for that shift.

19 Q. And then did Captain Burkett
20 call Lieutenant Adams at Station Three at
21 some point and inform him that Sergeant
22 Hartwell was not going to come because he
23 was sick?

1 A. Yes, sir. And that's -- it's
2 protocol for the district supervisor to
3 call the officer to advise the officer of
4 who he would have coming to pull the
5 detail, and what time he would be coming.

6 Q. When he called Lieutenant
7 Adams and told him that Hartwell was sick,
8 what did Lieutenant Adams tell him?

9 Lieutenant Adams basically laughed
10 and said, okay. He said that. In other
11 words, meaning he said that he would go
12 home if he would have to come on detail --
13 basically. It's not verbatim.

14 Q. When you say, "go on
15 detail" -- now if I understand it right,
16 that meant he was going to Truck 45; is
17 that right?

18 A. Yes, sir. He was going to
19 another station, and we call that detail.
20 When you are not working at your house.
21 When you are working at another house, and
22 we call it a detail. So he was going to
23 another house to complete that shift.

1 Q. Did that particular house have
2 some extra duties that were scheduled for
3 that day?

4 A. Yes, sir. It was my
5 understanding that they had a pretty heavy
6 workload that day -- : Changing hose, et
7 cetera, et cetera.

8 Q. In fact if I read it right, I
9 think they were going to inventory one of
10 the heavy rescue vehicles that day; is
11 that right?

12 A. Yes, sir.

13 Q. And change the hose out on
14 Engine Three?

15 A. Yes, sir.

16 Q. When Hartwell returned to work
17 on August the 7th, who was his District
18 Chief on that particular day?

19 A. The District Chief was Kelley
20 Gordon.

21 Q. Did Chief Gordon talk to
22 Sergeant Hartwell about his being sick?

23 A. Yes, he did.

1 Q. What did he tell him?

2 A. He told him that he -- that he
3 was sick on August the 4th and that he
4 went to, I believe, PriMed or he went to
5 the doctor.

6 Q. Hartwell told Gordon that?

7 A. Yes.

8 Q. How did Chief Gordon respond?

9 A. Chief Gordon responded by
10 asking Sergeant Hartwell if he would --
11 upon his next day or next shift at work --
12 if he would bring a doctor's
13 certificate -- a return to work doctor's
14 certificate stating that he did indeed go
15 to the doctor.

16 Q. What was Hartwell's response?

17 A. Hartwell's response was,
18 basically, I can't do that, or I won't do
19 that, or I was advised not to bring a
20 doctor's certificate.

21 Q. At some point was that
22 instruction repeated by Chief Gordon at
23 some point?

1 A. Yes. If I recollect at least
2 twice he asked him again if he would just
3 bring the certificate in the next day you
4 come to work.

5 Q. Did he ask him or did he tell
6 him to?

7 A. No, sir. He told him to.

8 Q. What was the response on the
9 two successive commands?

10 A. The same as the first one. I
11 can't do that, or I'm not required to do
12 that, or I was advised not to.

13 Q. Is it normal, Chief, if
14 somebody is sick, or is it standard
15 procedure for a Chief or a Captain or an
16 Officer to ask for or require a return-to-
17 duty slip from a doctor?

18 A. Yes, sir, it is. It's at the
19 discretion of the officer.

20 Q. Is it important for the
21 officers to know that their firefighters
22 are healthy when they are on shift?

23 A. Yes, sir, it is.

1 Q. Did you get some communication
2 after that from Sergeant Hartwell after he
3 had his conversation with Chief Gordon?

4 A. Yes, I believe I did. Yes.

5 Q. What happened? What did you
6 get?

7 A. Let me not rely on my
8 recollection. Let me look at my notes for
9 a minute. I did receive a communication
10 letter -- and I believe that the gist of
11 the letter was from Sergeant Hartwell
12 explaining to me what actually happened on
13 that day involving him going home with a
14 sick leave.

15 Q. Was that dated about August
16 the 7th, around the same time Chief Gordon
17 talked to him?

18 A. Yes, sir.

19 Q. How did you receive that
20 letter or memo from Sergeant Hartwell?

21 A. Well, I took offense to it
22 because it's not procedure that Sergeants
23 write letters directly to the Assistant

1 Chief or any higher ranking person without
2 first going through his company officer.

3 Q. Did it come directly to you or
4 did it come up through the ranks?

5 A. My understanding is that it
6 came directly to me. Now, he may have --
7 he may have distributed some other
8 letters, but it was sealed to me.

9 Q. I see. What's the proper
10 procedure? If Sergeant Hartwell wants to
11 get communication to you, what's proper
12 procedure for that?

13 A. He starts first with his
14 immediate supervisor, which would be his
15 company officer.

16 Q. That would be a lieutenant or
17 captain?

18 A. Yes, sir.

19 Q. Is it normal for that to get
20 passed up through the chain of command to
21 you through those officers?

22 A. Yes, sir, it is possible.
23 Going back I did find his communications

1 to me. And I believe the way it went is
2 that he wanted to handmail me a letter.
3 The letter was brought into question by
4 the District Chief because his company
5 officer gave it to the District Chief to
6 bring downtown to me. The District Chief
7 questioned that letter as to whether or
8 not the Captain knew the contents of it
9 and did he actually permit it or sign off
10 on it. The captain's response was
11 basically no, I did not sign off on the
12 letter and I basically did not give him
13 permission. And I believe how it went
14 then is that the District Chief, Kelley
15 Gordon, told the Captain to open the
16 handmail envelope, read the contents, and
17 then sign off on it. That was done and
18 then the District Chief allowed that
19 handmail to come to me.

20 Q. Now is that the first time you
21 got a letter directly from Sergeant
22 Hartwell?

23 A. No, sir.

1 Q. How many times have you
2 received a letter directly from him?

3 A. At least two, possibly three.

4 Q. I'm going to show you a
5 document. It's a memo dated August the
6 17th of 2004. I'm going to ask you if you
7 recognize that.

8 A. Yes, sir. This is a memo
9 filed that I wrote for my personal file
10 concerning Sergeant Hartwell's addressing
11 a written communication to me.

12 Q. And this was August 17th of
13 2004, correct?

14 A. Yes, sir.

15 Q. This was a full year before
16 the events we are talking about now,
17 right?

18 A. Yes, sir.

19 Q. I believe it's in the last
20 paragraph you talk about Hartwell being
21 informed of the fact that he's not
22 supposed to be sending these letters
23 directly to you?

1 A. Yes, sir. I wrote: Future
2 circumventing under the chain of command
3 from this sergeant in this regard when is
4 not necessary will result in actions taken
5 in the form of a written reprimand.

6 Q. Does it say in there -- a
7 little bit past that -- that District
8 Chiefs Holland and Petrey had both
9 informed him that he wasn't supposed to do
10 that?

11 A. Yes, sir.

12 Q. Is it written in the Fire
13 Department Manual that he's not supposed
14 to do that?

15 A. It is written that he's
16 supposed to follow the chain of command,
17 meaning starting with his immediate
18 supervisor.

19 Q. I'm going to show you another
20 memo that's dated September the 20th, 2004
21 and ask you if you recognize that?

22 (WHEREUPON, a document was
23 marked as Exhibit No. 2 and is

1 attached to the original
2 transcript.)

3 A. Yes, sir. This, again, is a
4 memo of written communication from
5 Sergeant Hartwell to me.

6 Q. Was this done after you
7 received yet another communication from
8 him?

9 A. Yes, sir.

10 Q. And this was after the
11 previous memo and after District Chiefs
12 Holland and Petrey had told him that he
13 wasn't supposed to be sending them
14 directly to you; is that right?

15 A. Yes, sir.

16 Q. Does it say in there that you
17 had no choice but to charge him with rules
18 violations?

19 A. Yes, sir. Displayed behavior
20 of disrespect continued. It leaves me no
21 other choice than to bring charges against
22 Sergeant Hartwell for failure to obey
23 officers and district chief orders

1 pertaining to the circumvent of the chain
2 of command.

3 Q. I'll show you another document
4 that is a September 25, 2004 Form 30B.
5 I'm going to ask you if you've seen that
6 before?

7 A. Yes, sir. I have reviewed
8 this document.

9 Q. Is this the write-up that was
10 generated subsequent to that memo that you
11 just talked about?

12 A. Yes, sir.

13 Q. And this was a counseling that
14 was done by -- was it his captain or
15 district chief?

16 A. District chief.

17 Q. Written in the bottom right-
18 hand corner, what does that say?

19 A. Sergeant Hartwell refused to
20 sign the form.

21 Q. And this documents a verbal
22 counseling session that was had by his
23 then District Chief Petrey regarding that

1 letter; is that correct?

2 A. Yes, sir.

3 Q. Now, Chief, the next charge
4 that you brought against Sergeant Hartwell
5 is for making untrue and false and
6 slanderous allegations against a
7 superior. Tell the Board, if you will,
8 what happened in that situation. How it
9 came to your attention and what the
10 allegations were.

11 A. District Chief Kelley, if I
12 recollect the chain of events, came to me
13 and told me that he had received a letter
14 allegedly accusing him of being a racist
15 because -- and to substantiate Sergeant
16 Hartwell's claim as him being a racist --
17 indicated that he had a Confederate tattoo
18 on his arm. Chief Kelley was very
19 disturbed by that.

20 Q. This was an accusation made by
21 then Sergeant Hartwell?

22 A. Yes, sir.

23 Q. About Chief Gordon, right?

1 A. Yes, sir.

2 Q. Was that investigated? Did
3 the department look into that?

4 A. Yes. The department had
5 visited that situation years prior --
6 somewhere in 1990s. The department had
7 said that the tattoo was perfectly in line
8 with a tattoo policy that we have. In
9 other words, it did not violate any tattoo
10 policies and that he had every right to
11 have that tattoo.

12 Q. Did the department question
13 him about why he had that tattoo?

14 A. I think perhaps during the
15 initial investigation and claims. Chief
16 Kelley told me some accounts of how he
17 came about the tattoos. So the question
18 perhaps was asked by the department at
19 some time.

20 Q. What was your understanding
21 about how he got the tattoo?

22 A. The way he explained it to me,
23 he was a Navy man. And he says, Chief

1 everybody in the Navy has a tattoo --
2 which you take that with a grain of salt.
3 But he said I was 17 years old, I was out
4 drinking one night, my buddy and I passed
5 by this tattoo parlor -- I was from
6 Alabama -- my Navy buddies called me Bama
7 or Alabama -- so he walks into this tattoo
8 parlor and he said I want that one right
9 there that says Alabama and I want the
10 Confederate flag tattooed on my arm. And
11 he's had it since age 17 or 18.

12 Q. How long have you worked with
13 Chief Gordon?

14 A. I have worked with Chief
15 Gordon all of his career. I think Chief
16 Gordon has approximately 17, 18 years in
17 the department.

18 Q. Have you worked closely with
19 him? Do you know him on a daily basis?

20 A. Yes, sir. I've worked closely
21 with him for the last three years since
22 he's been District Chief.

23 Q. Did you have contact with him

1 before that when he became district chief?

2 A. Yes, sir. Become the officer,
3 captain and also as lieutenant,
4 lieutenant-in-training.

5 Q. Did you have any reason to
6 believe that he was a racist or that he
7 treated anybody unfairly or unequally?

8 A. No, sir. I've never had that
9 thought in my mind. I've never witnessed
10 him being considered as such and I didn't
11 consider him as being as such.

12 Q. Now these accusations that
13 Sergeant Hartwell made, were they made
14 after he and Chief Gordon had had some
15 problems?

16 A. Yes, sir.

17 Q. And some of those problems
18 we've talked about here?

19 A. Yes, sir.

20 Q. In fact Chief Gordon was
21 Sergeant Hartwell's district chief for
22 quite a while when he was at several
23 stations; is that right?

1 A. At least one other station,
2 yes.

3 Q. That was Station 13?

4 A. Station 16, I believe. At one
5 time Sergeant Hartwell was stationed at
6 Station 16.

7 Q. Wasn't he also at 13 at some
8 point?

9 A. At this particular time that
10 we are speaking of, yes, he was at Station
11 13.

12 Q. And that's where Chief Gordon
13 pretty much stays during his shift?

14 A. That's his house. Yes.

15 Q. Has Sergeant Hartwell made any
16 other similar allegations in the past?

17 A. Concerning the Confederate
18 flag?

19 Q. Well, any allegations like
20 that against any other officer?

21 A. Yes, sir. We go back to his
22 previous station, Station 16. He made
23 reference to his captain, Captain Dennis,

1 at the time about something to the effect
2 that he made a statement that -- to
3 District Chief Petrey in writing -- that
4 he bluffed Captain Dennis on one occasion
5 and played the race card by asking him if
6 he was a racist.

7 Q. Had he and Captain Dennis had
8 some problems at Station 16?

9 A. Yes, they had some problems.

10 Q. And that had to do with
11 parking places and where sergeants could
12 sleep in that station?

13 A. Where he could sleep, not
14 sergeants -- but where he could sleep.

15 Q. Okay.

16 MR. MILLS: That's all.

17

18 CROSS-EXAMINATION BY MR. BRANNAN:

19 Q. Chief, that statement about
20 saying he was alleging Dennis was a
21 racist, you said that was made in writing
22 by Hartwell. That wasn't in writing about
23 Hartwell was it, that was a memo from --

1 A. It was a memo from one of my
2 District Chiefs, District Chief John
3 Petrey, I believe.

4 Q. So when you say it was in
5 writing it wasn't in writing -- that that
6 was something that Hartwell put in
7 writing, was it?

8 A. It was in writing from
9 District Chief Petrey.

10 Q. Now, y'all introduced -- and I
11 don't know what number you had on it --
12 but a counseling form stating that on
13 August the 11, 2004. Did you look at
14 this?

15 A. Yes, I have that one. I'm
16 sorry. This is a different one. Let me
17 see that.

18 MR. MILLS: No, that's it.

19 Q. (MR. BRANNAN) You see right
20 here? The first two that occurred on
21 August the 11th?

22 A. Yes.

23 MR. PATERSON: Is this No.

1 3 y'all are talking about?

2 MR. MILLS: Yes.

3 MR. BRANNAN: And I don't
4 have a copy of this.

5 Q. (MR. BRANNAN) I'm going to
6 show you what I've got marked as
7 Employee's Exhibit No. 5. That daily
8 journal would show who was on duty that
9 day, would it not?

10 (WHEREUPON, a document was
11 marked as Employee's Exhibit
12 No. 5 and is attached to the
13 original transcript.)

14 A. Yes, sir.

15 Q. Is Sergeant Hartwell even on
16 duty on August the 11th?

17 A. No, sir.

18 Q. Okay.

19 MR. BRANNAN: We move to
20 introduce that.

21 Q. (MR. BRANNAN) Chief, I want
22 us to try to get clear on this situation
23 about the tattoo policy. Isn't it true

1 that Sergeant Hartwell complained about
2 that originally in 1999 before Kelley
3 Gordon was any form of District Chief and
4 before Kelley Gordon was ever above him or
5 his supervisor?

6 A. Yes, sir.

7 Q. And the tattoo policy has been
8 in effect since 1999; is that correct?

9 A. I believe that's correct, yes,
10 sir.

11 Q. I'm going to show you what's
12 marked as Employee's Exhibit No. 1. Take
13 a look at that, please, sir. Is that the
14 policy?

15 (WHEREUPON, a document was
16 marked as Employee's Exhibit
17 No. 1 and is attached to the
18 original transcript.)

19 A. Yes, sir.

20 Q. The tattoo policy we've been
21 talking about?

22 A. Yes, it is.

23 Q. On that policy that we have

1 there it talks about how and when you can
2 have a tattoo and it refers to
3 unauthorized tattoos. It says anywhere on
4 the body that are obscene and/or advocates
5 sexual, racial, ethnic or religious
6 discrimination are prohibited in and out
7 of uniform. Tattoo brands that are
8 prejudicial to the good order and
9 discipline or of the nature that tends to
10 bring discredit upon the Montgomery Fire
11 Department of the City of Montgomery are
12 prohibited in and out of uniform. That's
13 the policy, is it not?

14 A. Yes, sir.

15 Q. And it goes on to state just
16 being able to cover it up with some form
17 of the uniform or anything doesn't work --
18 you can't do that, you can't have it; can
19 you?

20 A. I don't know it verbatim to
21 say that.

22 Q. Okay. And it goes on to say
23 that Montgomery Fire Department members

1 with existing tattoos or brands before
2 they placed the policy not meeting
3 acceptable Fire Department appearance and
4 image will be required to remove the
5 tattoos or brands. It states that too,
6 doesn't it?

7 A. Yes.

8 Q. Move to introduce Exhibit
9 1. Kelley Gordon's tattoo is a Confederate
10 flag with a skull in the middle of it,
11 isn't it?

12 A. You know I don't recall
13 really.

14 Q. It's on his arm right here.

15 A. Yes. About the skull that is.

16 Q. I understand. But you know
17 that the Confederate flag with whatever
18 it's got in it is right there on the side?

19 A. Yes.

20 Q. Are you familiar with the
21 skull and the Confederate flag being an
22 insignia of skinheads?

23 A. No, I'm not.

1 Q. Now, in August of 2005, Kelley
2 Gordon sent you a memo that I've marked as
3 Exhibit 7. And in that memo he talks
4 about the Confederate flag tattoo in
5 there, does he not?

6 (WHEREUPON, a document was
7 marked as Defendant's Exhibit
8 No. 7 and is attached to the
9 original transcript.)

10 A. Yes, sir.

11 Q. And in that memo he talks
12 about how back in 1999 Officers Hartwell
13 and Troy Harris had complained about that
14 tattoo.

15 A. Yes, sir.

16 Q. And he states that they had
17 complained up the chain of command about
18 him having that tattoo.

19 A. Yes, sir.

20 Q. And it talks about it as late
21 as 2005?

22 A. Well, he brought it up again,
23 yes.

1 Q. Okay.

2 MR. BRANNAN: Move to
3 introduce Exhibit 7.

4 Q. (MR. BRANNAN) In fact when
5 the complaint was made about the tattoo,
6 it was long before he was his chief. And
7 then when he became his chief and started
8 disciplining Hartwell, Hartwell brought it
9 back up, didn't he, and said disciplining
10 me because I complained back in 1999;
11 isn't that true?

12 A. I didn't understand it to
13 happen that way.

14 Q. Well then what was Hartwell
15 bringing it up to you about it again?
16 You've already testified that Hartwell
17 brought it up to you complaining about
18 that Confederate flag.

19 A. I think he brought it up
20 because he was being disciplined and he
21 wanted something to bring up against Chief
22 Kelley to --

23 Q. When you say Chief Kelley you

1 mean Chief Gordon?

2 A. Chief Gordon, yes.

3 Q. Did you even think that maybe
4 you might want to look to see if Gordon
5 was disciplining him differently than
6 other people because of the fact he had
7 complained on him in '99 about that
8 Confederate flag?

9 A. I did look. We talked. Chief
10 Gordon and I did talk about the whole
11 situation. And as I have explained to the
12 Board what took place, I had no reason to
13 believe that Kelley was doing this out of
14 malice towards Sergeant Hartwell.

15 Q. Well, in fact you testified
16 earlier that Kelley Gordon was his
17 District Chief when he was written up and
18 investigated about this sick-leave
19 incident. Didn't you testify to that?

20 A. Yes, sir.

21 Q. He was really not his district
22 chief, though, was he?

23 A. That's correct.

1 Q. He was not his chief. He
2 stayed on in the morning to handle a
3 problem that he perceived was Hartwell --
4 and Hartwell wasn't even working under him
5 that day -- Hartwell had another district
6 chief. Kelley Gordon was on the shift
7 before.

8 A. Kelley Gordon, the shift that
9 he worked overtime on, was Kelley Gordon's
10 shift. He was not on Kelley Gordon's
11 shift. -- Sergeant Hartwell was not.

12 Q. But isn't it true that Kelley
13 Gordon stayed late after his duty hours
14 and kept Hartwell after the duty hours so
15 he could deal with him on a circumstance
16 when he was not his district chief.

17 A. Well, actually he is the
18 district chief because he was district
19 chief of that district.

20 Q. Well, don't you have one for
21 each shift?

22 A. That's correct.

23 Q. And wouldn't that be the

1 proper chain of command?

2 A. It was a captain working that
3 day, August 4th.

4 Q. Okay. But there was also a
5 different district chief for that day, for
6 that shift other than Kelley Gordon.

7 A. A captain was working that day
8 as district supervisor.

9 Q. Because the district chief
10 that should have been there was off?

11 A. That's correct. Which was
12 Gordon.

13 Q. Kelley Gordon was on the shift
14 before, stayed late to discipline him on
15 this issue concerning the sick leave.

16 A. Yes, sir.

17 Q. Now, as far as the Confederate
18 flag, this is what the insignia looks like
19 that the city has now for the Fire
20 Department, isn't it?

21 A. That's correct.

22 Q. What this is would be a
23 firefighter's because it's silver. What

1 you've got is gold because you are a
2 chief?

3 A. Yes, sir. Officer.

4 Q. Officer. This is what was
5 replaced, was it not?

6 A. Yes, sir.

7 Q. When was this replaced?

8 A. I don't recall.

9 Q. It's been in the last year or
10 so, wasn't it?

11 A. No. It's been longer than a
12 year.

13 Q. Okay. It's been in the last
14 four years?

15 A. Perhaps.

16 Q. And it was replaced because it
17 had the Confederate flag on it, didn't it?

18 A. No, it wasn't replaced because
19 of that.

20 MR. BRANNAN: I don't have
21 them marked but, I introduce those two.

22 (WHEREUPON, documents were
23 introduced and are attached to

1 the original transcript.)

2 Q. (MR. BRANNAN) Now, let's talk
3 about the sick leave policy. Chief Gordon
4 decided that he was going to deal with him
5 on violation of a sick leave policy; is
6 that right?

7 A. Not exactly.

8 Q. Well, are you familiar with a
9 policy that the department has concerning
10 sick leave?

11 A. I am.

12 Q. I'll show you what's been
13 marked as Employee's Exhibit No. 4 and ask
14 you if that is that policy?

15 (WHEREUPON, a document was
16 marked as Employee's Exhibit
17 No. 4 and is attached to the
18 original transcript.)

19 A. Yes, it is.

20 Q. And that policy states it
21 deals with getting a doctor's excuse, does
22 it not? Second page.

23 A. That's correct.

1 Q. Here it states at the
2 discretion of a company officer or
3 district supervisor, a physician excuse
4 may be required from an employee using
5 paid sick leave. That's the language that
6 it has, does it not?

7 A. Yes, that's correct.

8 Q. Now, Sergeant Hartwell was not
9 using paid sick leave when he left on a
10 day that he was volunteering to work an
11 extra day, was he?

12 A. I'm not sure I understand what
13 your question is.

14 Q. Well, could he have applied
15 for sick leave that day?

16 A. I think he can.

17 Q. So I can volunteer for an
18 extra day that's not my assigned shift, be
19 working overtime, and then say I'd like to
20 have sick leave because I'm not feeling
21 well?

22 A. I believe you can.

23 Q. You know he's not eligible for

1 sick leave working overtime on an extra
2 shift.

3 A. If he becomes sick, he's sick.

4 Q. He just gets paid for the
5 overtime up until when he gets sick and
6 leaves. He can't be on overtime and get
7 overtime sick leave.

8 A. Okay.

9 Q. Now if this language says that
10 an officer may ask for a doctor's excuse
11 if the employee is using paid sick leave.
12 He can ask for it if he's not using paid
13 sick leave, because y'all don't meddle in
14 everybody's health and what their problems
15 with health are unless it's related to
16 work and your sick leave policy; isn't
17 that true?

18 A. What is the question?

19 Q. Well, the question is: Y'all
20 don't go dabble into everybody's health
21 conditions down there and trying to figure
22 out what kind of health they are in unless
23 it has something to do with employment, do

1 you?

2 A. I think that's more of a
3 statement than a question. I don't
4 understand what your question is.

5 Q. Do you? That's the question.

6 A. Do we what?

7 Q. Do you meddle into everybody's
8 health condition down there?

9 A. No, we don't meddle into
10 health conditions.

11 Q. In fact you understand that
12 there are rules that keep you from doing
13 that, don't you?

14 A. We do not meddle into people's
15 health conditions.

16 Q. Did Kelley Gordon go and get
17 memos and statements and things from
18 people concerning this -- whether or not
19 Hartwell was sick?

20 A. Yes.

21 Q. And he went around and asked
22 people to give him memos or do reports and
23 whatever y'all call --

1 A. He asked for documents on what
2 was stated on the drill field by Sergeant
3 Hartwell.

4 Q. Was there another firefighter
5 who said that he ate the same thing at
6 lunch that Hartwell did and he had stomach
7 cramps?

8 MR. MILLS: I'm going to
9 object. It's not relevant. He's not
10 being written up for being sick.

11 MR. BRANNAN: It's totally
12 relevant if he ate the same thing the man
13 ate.

14 MR. MILLS: He was written
15 up for not following an order to get a
16 doctor's return-to-work slip. That's it.

17 MR. BRANNAN: Well if
18 that's their position, then we won't go
19 forward with that because I think they've
20 got documentation that he's not required
21 to do that. He was not written up for
22 saying he was sick and he wasn't.

23 MR. MILLS: No.

1 MR. BRANNAN: Okay.

2 Q. (MR. BRANNAN) Now, did you
3 have any input on determining what the
4 recommended discipline was going to be for
5 Sergeant Hartwell -- that he would be
6 demoted?

7 A. It was my recommendation.

8 Q. It was your recommendation,
9 wasn't it?

10 A. Yes.

11 Q. And one of the things that he
12 is charged with, I think, is that he
13 didn't follow the chain of command; is
14 that correct?

15 A. Yes.

16 Q. I'm going to show you what's
17 marked as Employee's Exhibit 2. Is that
18 the chain of command policy?

19 (WHEREUPON, a document was
20 marked as Employee's Exhibit
21 No. 2 and is attached to the
22 original transcript.)

23 A. Yes.

1 Q. The memos that Hartwell sent
2 up the chain to you -- you testified in
3 the Mayor's Hearing that they should not
4 have been addressed to you; is that
5 correct?

6 A. Yes.

7 Q. They should have been
8 addressed to his company officer rather
9 than to you?

10 A. Yes.

11 Q. How does that purport with
12 this policy saying that they should be
13 addressed to the person and the station
14 number that you are sending them to? So
15 if he wants to get a memo to a District
16 Chief, he's not to address it to the
17 District Chief, he's to address it to his
18 company officer. Is that what your
19 testimony is?

20 A. Yes.

21 Q. How does that add up with the
22 department's policy that shows right here
23 the example is from William A. Ross,

1 Firefighter, to James O. Smith, District
2 Chief?

3 A. Because that's not common
4 practice.

5 Q. It's the policy.

6 A. But the district chiefs and
7 firefighters have been instructed as to
8 the proper chain of command for the
9 heading of a letter.

10 Q. But this right here is the
11 interdepartmental communications policy
12 Section 963 Proper Interdepartmental
13 Communication.

14 A. 1992.

15 Q. Exactly. That's the one. And
16 I asked you and you checked your file to
17 make sure it was right, didn't you?

18 A. Yes.

19 Q. And it was right. This is the
20 policy and it shows directly from a
21 firefighter to a district chief.

22 A. Yes.

23 MR. BRANNAN: We move to

1 introduce Exhibit 2.

2 Q. (MR. BRANNAN) Now, I
3 requested in discovery a file that you
4 said you kept on all these memos that you
5 get. Correct me if I'm wrong, but I
6 didn't get it. But I do have a number of
7 memos that I have been able to find in
8 other areas -- and I'm going to show you
9 what's marked as Exhibit 3. Will you look
10 through those and see if those aren't
11 Interdepartmental Fire Department memos?

12 (WHEREUPON, a document was
13 marked as Employee's Exhibit
14 No. 3 and is attached to the
15 original transcript.)

16 A. Yes, they are.

17 Q. Is any one of them there
18 addressed to the person right above the
19 firefighter?

20 A. These letters here are a
21 request from the district chief. It's a
22 directive from the district chief. It was
23 an investigation and the district chief in

1 his investigation asked firefighters to
2 write to him letters of document.

3 Q. Well, how about this one right
4 here -- the very first one. You've got it
5 right here. Look at the very first one
6 right there. This is from Firefighter D.
7 M. Adams to District Chief W. Young. It
8 has nothing to do with Young asking him to
9 do an investigation. It has to do with a
10 complaint about the sergeant's test,
11 doesn't it?

12 A. Yes, it does.

13 Q. Now, are you aware of any of
14 these individuals being written up for a
15 chain of command?

16 A. No.

17 Q. Any one of these individuals
18 here ever complain on Gordon about that
19 tattoo?

20 A. None of these.

21 Q. Okay.

22 MR. BRANNAN: Move to
23 introduce Exhibit 3.

1 Q. (MR. BRANNAN) Now in
2 recommending the discipline for Hartwell,
3 did you feel it was consistent with what
4 you had done in the past with other
5 employees of the fire department?

6 A. I did.

7 Q. Are you familiar with a
8 Firefighter R. L. Rainer?

9 A. I know him. Yes.

10 Q. Are you familiar with the
11 situation where he was asked to bring a
12 doctor's excuse as a result of him being
13 on sick leave and him forging the doctor's
14 excuse?

15 A. I believe I recollect that,
16 yes.

17 Q. Brought two separate forgeries
18 in so he could get sick leave?

19 A. Yes.

20 Q. And you recommended for him
21 just a 15-day suspension, did you not?

22 A. I believe that's correct, yes.

23 MR. BRANNAN: I move to

1 introduce 9.

2 (WHEREUPON, a document was
3 marked as Employee's Exhibit
4 No. 9 and is attached to the
5 original transcript.)

6 Q. (MR. BRANNAN) Are you
7 familiar with District Chief J. L.
8 Jennings?

9 A. Yes, I am.

10 Q. Are you familiar with you
11 making claims of her just completely
12 insubordinate to you?

13 A. Yes, I do.

14 Q. And you made that claim and
15 had her investigated about that more than
16 once, have you not?

17 A. Only once.

18 Q. You also had a situation where
19 y'all had to bring her in and talk to her
20 about driving around and stalking
21 somebody, didn't you, another
22 firefighter's wife?

23 A. I played no part in that.

1 Q. But you are aware that that
2 occurred, aren't you?

3 A. Yes.

4 Q. And there were incidents where
5 she had problems with firefighters where
6 you had to -- they made complaints on her
7 and you transferred, is it, Jones to get
8 him out from under her?

9 A. I don't recollect Jones --
10 perhaps Quinnley, not Jones.

11 Q. Okay. And she's a district
12 chief -- she's still a district chief.

13 A. Yes.

14 Q. And you recommended a
15 suspension for her and she was suspended.
16 But she's had these charges against her
17 and nobody's ever recommended a demotion,
18 have they?

19 A. I recommended a 29-day
20 suspension.

21 MR. BRANNAN: I move to
22 introduce Exhibit 10.

23 (WHEREUPON, a document was

1 marked as Employee's Exhibit
2 No. 10 and is attached to the
3 original transcript.)

4 Q. (MR. BRANNAN) Are you
5 familiar with circumstances in a memo you
6 wrote concerning Sergeant A. C. Gibson?

7 A. That's been a while. I need
8 to look at that one.

9 Q. 2003. I will be glad to have
10 you look at it.

11 A. I'm sure I did. I just can't
12 remember what it was concerning. Yes,
13 this is mine.

14 Q. Now, Gibson was a sergeant; is
15 that correct?

16 A. Yes.

17 Q. And he and Gordon got into a
18 situation where he was yelling at Gordon;
19 is that correct?

20 A. Yes. It states that, that
21 Sergeant Gibson yelled out.

22 Q. And you stated that Gordon
23 says he was rude and disrespectful and he

1 was talking out of control and causing a
2 scene in front his fellow firefighters?

3 A. Yes.

4 Q. And the problem here was he
5 was telling Gordon that if he went to the
6 doctor it was going to be on work time
7 because he wasn't going to do it on his
8 off-duty time; is that correct?

9 A. Yes.

10 Q. And he ended up getting a
11 five-day suspension; is that correct?

12 A. Yes.

13 Q. He was not demoted, correct?

14 A. Yes.

15 MR. BRANNAN: Move to
16 introduce Exhibit 11.

17 (WHEREUPON, a document was
18 marked as Employee's Exhibit
19 No. 11 and is attached to the
20 original transcript.)

21 Q. (MR. BRANNAN) Were you
22 involved in anything concerning a
23 Firefighter W. M. Jones and a problem he

1 had with a Sergeant Huffman?

2 A. No, sir.

3 Q. If you would, take a look at
4 this for me and see if that is anything
5 you remember and know anything about.

6 A. I know some details of this
7 incident. Yes.

8 Q. This was a firefighter that
9 just refused to do something that he was
10 told to do and got in an argument with a
11 sergeant; is that correct?

12 A. Yes.

13 Q. And one of the things involved
14 had to do with the chain of command, too,
15 didn't it?

16 A. I'm not so sure about it.

17 Q. With this, action was taken
18 against him because he had been
19 disrespectful and such to the sergeant; is
20 that correct?

21 A. Yes.

22 Q. And he got a five-day
23 suspension?

1 A. Yes.

2 MR. BRANNAN: Move to
3 introduce 12.

4 (WHEREUPON, a document was
5 marked as Employee's Exhibit
6 No. 12 and is attached to the
7 original transcript.)

8 Q. (MR. BRANNAN) Are you
9 familiar with the incident when
10 Firefighter Stan Martin refused a direct
11 order from Sergeant, at that time,
12 Hartwell and a Form 30 was prepared on
13 this and no action was taken -- and in
14 fact the Form 30 was signed off as void.
15 Are you familiar with that?

16 A. Yes.

17 Q. And Martin was charged with
18 disobeying a direct order to do something
19 by Hartwell, was he not?

20 A. Yes, I believe that was.

21 Q. But the Form 30 on that was
22 refused and just marked off with just a
23 void on it.

1 MR. BRANNAN: We will mark
2 that as an Exhibit.

3 Q. (MR. BRANNAN) Is that just
4 marked off void?

5 A. Yes.

6 Q. No action was taken against
7 Martin for refusing a direct order from
8 Hartwell when he was a sergeant, was
9 there?

10 A. I believe he may have been
11 transferred. I can't recall. He may have
12 been transferred.

13 Q. There was no difference from
14 him refusing a direct order from Hartwell
15 than Hartwell refusing bringing in this
16 doctor's excuse, was it? You are saying
17 that was a direct order.

18 A. Yes, sir, there is a
19 difference.

20 Q. And what is that?

21 A. Is that he disobeyed a
22 commanding officer, a chief officer.

23 Q. Oh, so in the fire service you

1 can disobey a sergeant but you can't
2 disobey a district chief.

3 A. I said he, Sergeant Hartwell,
4 disobeyed a direct order from a senior
5 officer.

6 Q. But Martin disobeyed a direct
7 order from a sergeant?

8 A. Yes.

9 Q. Whose initial is on that back
10 page of that void?

11 A. MJ.

12 Q. Who is that?

13 A. Miford Jordan.

14 Q. What's his rank?

15 A. Deputy fire chief.

16 Q. He's your superior officer,
17 isn't he?

18 A. Yes, sir.

19 Q. So somehow this got up to
20 him -- and because it was Hartwell that's
21 been disobeyed, it gets void?

22 A. I don't think it happened that
23 way.

1 MR. BRANNAN: Move to
2 introduce 13.

3 (WHEREUPON, a document was
4 marked as Employee's Exhibit
5 No. 13 and is attached to the
6 original transcript.)

7 Q. Now, you are in --

8 A. I do tell you what I do feel
9 about that. I think --

10 Q. Well, you'll have your
11 opportunity to do that when your lawyer
12 asks you. I'm going to go on to something
13 else.

14 A. -- Sergeant Hartwell abused
15 his power in that situation.

16 Q. I'll show you another memo
17 from you concerning Fire Medic A. D.
18 Rose. Now you did the memo on that, but
19 he's not in fire suppression. He's a
20 medic, isn't he?

21 A. That's correct, yes, sir.

22 Q. Why would you have done a memo
23 on him?

1 A. Because I was assigned to do
2 it.

3 Q. And the situation with Rose
4 was that he refused a direct order, didn't
5 he?

6 A. No, sir. He was
7 disrespectful.

8 Q. Well, didn't the captain tell
9 him -- didn't somebody come into the
10 station to get his blood sugar checked?

11 A. That's correct.

12 Q. And he'd been in there
13 before. It was an elderly gentleman and
14 he came in and asked him to check his
15 blood sugar?

16 A. I believe that was correct,
17 yes, sir.

18 Q. And the captain told Rose to
19 do it, didn't he?

20 A. Yes, sir.

21 Q. And Rose didn't do it.
22 Instead he told the captain that he knew
23 where the kit was and that he could go do

1 it.

2 A. He did make that statement.

3 Q. He said, Captain, you are a
4 paramedic and you know where the kit is,
5 why don't you check it? That's what he
6 said, didn't he?

7 A. Yes, sir.

8 Q. Well, that's refusing an order
9 to go check the blood sugar, is it not?

10 A. But I believe he did do it.

11 Q. Did he also tell the captain:
12 I'll tell you like I told the officers at
13 training, I expect my paycheck every two
14 weeks unlike you, you depend on it. And
15 he's telling the captain that during this
16 discussion, is he not?

17 A. Yes, he did.

18 Q. And he got 15 days, didn't he?

19 A. Yes, he did.

20 Q. And that was based on your
21 recommendation?

22 A. Yes, sir.

23 MR. BRANNAN: Move to

1 introduce Exhibit 14.

2 (WHEREUPON, a document was
3 marked as Employee's Exhibit
4 No. 14 and is attached to the
5 original transcript.)

6 Q. (MR. BRANNAN) Do you remember
7 doing one on Palmer?

8 A. Yes, sir.

9 Q. His name is J. A. Palmer?

10 A. James A.

11 Q. Let me show you what's marked
12 as Exhibit 15. Palmer got into it with a
13 superior officer also, didn't he?

14 A. Yes.

15 Q. And you wrote the memo on him
16 also, didn't you?

17 A. Yes.

18 Q. And in that you stated he's
19 been having an attitude problem for a
20 while; is that correct?

21 A. Yes, I believe I stated that.

22 Q. And all of this concerned over
23 him trying to go around the chain of

1 command; is that correct?

2 A. Yes, in part. That was one of
3 the things that he was advocating.

4 Q. Well that was one of the
5 things, but he did a few others. I mean
6 he was in more trouble than just the chain
7 of command, wasn't he?

8 A. Not in this letter I don't
9 think. Subsequently, yes, he was.

10 Q. Well, you listed here on the
11 back all of the violations and there are
12 more than that -- just that chain of
13 command, wasn't it? If you look on your
14 next-to-last page, you have a few things
15 he's violated.

16 A. Yes. Chain of command.

17 Q. He was disrespectful and not
18 following the chain of command and he
19 received a five-day suspension, did he
20 not?

21 A. Yes.

22 Q. Based on your recommendation?

23 A. Yes.

1 MR. BRANNAN: Exhibit 15.

2 (WHEREUPON, a document was
3 marked as Employee's Exhibit
4 No. 15 and is attached to the
5 original transcript.)

6 Q. (MR. BRANNAN) Now, one of the
7 charges that you have brought against
8 Sergeant Hartwell is that he made untrue
9 statements about Chief Kelley Gordon; is
10 that correct?

11 A. Yes.

12 Q. What are the untrue statements
13 that he made?

14 A. I don't believe Chief Kelley
15 is a racist.

16 Q. Okay. So you are saying that
17 he said Kelley Gordon was a racist. Did
18 he say that in writing somewhere?

19 A. I don't recall if he spelled
20 it out as racist or exercising a racial
21 attitude.

22 Q. Well, in fact what he said --
23 that what y'all charged him with -- was

1 from a memo that he said in his opinion
2 Kelley Gordon was biased against him; is
3 that correct?

4 A. I have a memo recalling bias
5 used.

6 Q. Well, you have recommended a
7 man for demotion and one of the things you
8 are saying that he did was he said things
9 that were slanderous. That was the term
10 y'all used earlier in some of your
11 documentation building up to this, and
12 that were untrue about Chief Kelley
13 Gordon. And I want you to tell me exactly
14 what he did that you are basing that on.
15 You are right now saying I remember
16 something about bias. I want to know.
17 You are the man that recommended his
18 demotion. What was it he said about
19 Kelley Gordon that you consider to be
20 untrue?

21 A. He said that he used the
22 Confederate flag to intimidate him,
23 basically. And Chief Gordon never used

1 the Confederate flag to intimidate anyone.

2 Q. Do you see how if you had
3 reported somebody when they weren't your
4 superior -- if you had reported them up
5 the chain about the Confederate flag and
6 if you read the rule it says that if it's
7 offensive you can't have it. You can't
8 just cover it up -- you can't have it.
9 Can you see why a man might be intimidated
10 if all of a sudden that person is his
11 officer?

12 A. He had -- Chief Kelley had
13 been his commanding officer prior to this
14 incident on August the 4th and it was
15 never brought up.

16 Q. Exactly. And he had written
17 him up before August the 4th, too, hadn't
18 he? He'd written him up long before this
19 sick leave situation, had he not?

20 A. And it was deserved every time
21 he did it.

22 Q. Well let me ask you about
23 that. If a station fails an inspection,

1 the company officer is the one that's
2 written up on that, is that not true?

3 A. Not necessarily.

4 Q. Isn't that the procedure?
5 That the company officer is the one
6 responsible and is written up if there is
7 a failed inspection?

8 A. That could be, yes.

9 Q. And Kelley Gordon came in and
10 wrote up every individual firefighter in
11 the station because that station had
12 failed an inspection?

13 A. He wrote a memo on everyone.

14 Q. Well, it was an appraisal --
15 it was one of your forms. It was a
16 firefighter form.

17 A. And the reason why he did it
18 was because he sat each person down and
19 talked to them -- and it was just merely a
20 documentation.

21 Q. Well, it's what's called an
22 appraisal, wasn't it?

23 A. Yeah, I believe it was. At

1 that time it was a 30D. Now it's a Form
2 28. And any time you talk to a person
3 about anything you should do a Form 28.

4 Q. But back then it was the first
5 level of discipline, was it not?

6 A. Yes.

7 Q. So you get that and it'd go in
8 your file, then if you got disciplined
9 again you'd get that "Mustard Form" as
10 y'all call it. That would be the next
11 one, wouldn't it?

12 A. If it warrants, yes, or you
13 could get the Mustard Form right after
14 that if it warrants.

15 Q. Sure. But that is a form of
16 discipline is what my question is -- what
17 Kelley Gordon came in and presented them
18 all with in that fire station?

19 A. No, it wasn't a discipline.
20 It was a documentation that he counseled
21 with those persons about the cleaning of
22 the station and how he wanted it cleaned.
23 Now, that's how he perceived it and that's

1 how he presented it to me.

2 Q. Well, you saw the form and it
3 was telling them what they had done wrong?

4 A. And he documented what he told
5 them.

6 Q. Were you aware that Hartwell
7 was on vacation at the time they failed
8 the inspection?

9 A. Yes, I was.

10 Q. And are you aware that when he
11 said that doesn't pertain to me, I'm not
12 signing that, I wasn't even here -- that
13 Kelley Gordon writes him up for refusing a
14 direct order?

15 A. He wrote counseling forms on
16 all the personnel.

17 Q. I understand. But he wrote a
18 Mustard Form on one person in that
19 station -- the man that was on vacation
20 when it didn't pass -- who signed his form
21 after he talked to his company officer.

22 A. Let me see that form. I don't
23 recall that. I don't recall that. Not to

1 say that it didn't happen -- I just don't
2 recall it.

3 Q. Here is the Employee Appraisal
4 Review Record. That's what he was giving
5 to all of them -- even the man that was on
6 vacation when it happened.

7 A. And Sergeant Hartwell signed
8 it.

9 Q. Exactly. He did, didn't he?
10 His signature is on it.

11 MR. BRANNAN: And that was
12 16.

13 (WHEREUPON, a document was
14 marked as Employee's Exhibit
15 No. 16 and is attached to the
16 original transcript.)

17 Q. (MR. BRANNAN) If you would
18 now look at what's marked as 17. That's a
19 Mustard Form -- that's a discipline, isn't
20 it?

21 (WHEREUPON, a document was
22 marked as Employee's Exhibit
23 No. 17 and is attached to the

1 original transcript.)

2 A. Yes.

3 Q. So 16 is the form that he gave
4 Hartwell. And Hartwell says, I wasn't
5 there. I was on vacation. I don't know
6 whether I need to sign that. He says sign
7 it. Hartwell says, can I talk to my
8 officer? Talked to the officer. Then
9 Hartwell signs it. And then 17, Gordon
10 goes ahead and writes him up for refusing
11 a direct order.

12 A. Yes.

13 MR. BRANNAN: Move to
14 enter 16 and 17.

15 Q. (MR. BRANNAN) Now that was
16 back in 2003, was it not?

17 A. Yes.

18 Q. Let me show you what's marked
19 as Exhibit 18. In June of 2003 Hartwell
20 sends to Gordon a memo complaining about
21 him abusing his authority with him, with
22 Hartwell. Is that not a complaint based
23 on abuse of authority towards Hartwell?

1 A. I didn't consider it a
2 registered complaint.

3 MR. BRANNAN: Well, move
4 to introduce Exhibit 18.

5 (WHEREUPON, a document was
6 marked as Employee's Exhibit
7 No. 18 and is attached to the
8 original transcript.)

9 Q. (MR. BRANNAN) You are aware
10 that Hartwell has complained about the way
11 he was treated by Kelley Gordon from as
12 far back as 2003?

13 A. No, I'm not aware of that.

14 Q. Now, Hartwell had a situation
15 where he complained about Captain Norman,
16 did he not?

17 A. I'll have to see that.

18 Q. Okay. This is a memo from you
19 to Chief Jordan, isn't it?

20 A. Okay. Yes, I recall this.

21 Q. And Hartwell was complaining
22 because of Norman and others violating the
23 tobacco policy?

1 A. Yes.

2 Q. Now the fire department has a
3 tobacco policy, doesn't it?

4 A. Yes.

5 Q. Zero tolerance, isn't it?

6 A. Yes.

7 Q. You can't smoke?

8 A. No.

9 Q. You can't dip?

10 A. No.

11 Q. No tobacco at all?

12 A. That's correct.

13 Q. Norman admitted to you that he
14 used tobacco. He said he used it in
15 uniform, admitted doing it in front of
16 other men, and told you he just didn't
17 know if he was going to quit or not.
18 Isn't that true?

19 A. That's basically how it
20 happened, yes.

21 Q. And the only thing y'all did
22 was y'all transferred Hartwell because he
23 had complained about something that

1 somebody admitted to. Didn't take any
2 action against Norman, did you?

3 A. I think Norman was transferred
4 at the time.

5 Q. Norman told you that Chief
6 McKee had seen him smoking, didn't he --
7 you put it in your memo?

8 A. Let's see if I wrote that.
9 Now if I wrote it, I said it.

10 Q. Well, this may not be the one
11 it's in -- but look and see -- but I think
12 it's in this one.

13 A. I don't see that in there.

14 Q. Did you want anything done to
15 him? Did you want him punished or
16 anything?

17 A. Who is that?

18 Q. Norman.

19 A. We had somewhat of a cessation
20 program which we never really followed
21 through on it. He was supposed to seek
22 counseling first and then go through the
23 cessation period and blah, blah, blah --

1 it never was enforced.

2 Q. You put a quote in here from a
3 previous -- you said -- a former fire
4 department head once paraphrased this
5 quote and you wrote: If the officers of
6 the Montgomery Fire Department don't
7 provide proper supervision and leadership,
8 the department suffers directly and the
9 public indirectly.

10 A. Yes, I wrote that.

11 Q. And that was referring to
12 Norman and the blatant violation of the
13 tobacco policy; is that correct?

14 A. I wrote that, yes.

15 Q. But he was not disciplined at
16 all.

17 MR. BRANNAN: Exhibit 19.
18 I have no further questions.

19 (WHEREUPON, a document was
20 marked as Employee's Exhibit
21 No. 19 and is attached to the
22 original transcript.)
23

1 REDIRECT EXAMINATION BY MR. MILLS:

2 Q. Chief, how long have you been
3 working with the Montgomery Fire
4 Department?

5 A. Twenty-nine years, eight
6 months today.

7 Q. Now, why do you have it out
8 for Lee Hartwell?

9 A. I don't have anything against
10 Lee Hartwell.

11 Q. Now, come on, Chief, don't you
12 sit up in your office every day and try to
13 figure out a way to get back at Sergeant
14 Lee Hartwell?

15 A. No, sir. As a matter of fact
16 I was one of the most instrumental ones of
17 him getting promoted to sergeant.

18 Q. Let me ask you this:
19 Firefighter W. M. Jones, that Mr. Brannan
20 talked to you about, got five days of
21 suspension for being disrespectful to a
22 superior officer. What are you going to
23 demote him to?

1 A. There is no other rank below a
2 firefighter.

3 Q. You can't demote him, can
4 you?

5 A. No, sir.

6 Q. But he got five days
7 suspension, right?

8 A. Yes, sir.

9 Q. In fact he was complaining
10 that day because he wanted to drive a
11 truck, wasn't he?

12 A. I believe that's correct, yes,
13 sir.

14 Q. So he basically was
15 complaining because he wanted to take on
16 more responsibility in his company; is
17 that right?

18 A. Yes, sir.

19 Q. What about Firefighter Palmer,
20 what are you going to demote him to?

21 A. There is no rank lower than
22 firefighter.

23 Q. He got five days for being

1 disrespectful, too; is that right?

2 A. Yes, sir.

3 Q. Now that was the only charge
4 he was charged with, correct?

5 A. Yes, sir.

6 Q. What about Rainer, Firefighter
7 Rainer -- can't demote him either, can
8 you?

9 A. No, sir.

10 Q. Now he got 15 days; is that
11 right?

12 A. Yes, sir.

13 Q. And as I understand it, you
14 recommended more than that; is that right?

15 A. Yes, sir.

16 Q. What did you recommend?

17 A. I believe it was 29, sir. I
18 think that may have been the case where it
19 was reduced somewhere along the lines.

20 Q. That's right. And wasn't it
21 because Firefighter Rainer was apologetic
22 and remorseful about his actions?

23 A. Yes, sir.

1 Q. Fire Medic A. D. Rose, what do
2 you demote him to?

3 A. There is no rank below the
4 rank of firefighter.

5 Q. You recommended 15 days for
6 him, right?

7 A. Yes, sir.

8 Q. Now, you didn't recommend any
9 days off for Mr. Hartwell; is that right?

10 A. No, sir.

11 Q. District Chief Jennings, did
12 she refuse a direct order?

13 A. No, sir.

14 Q. Did she make false allegations
15 about anybody?

16 A. No, sir.

17 Q. Did she violate a rule after
18 she had been told twice formerly not to
19 violate that rule any longer?

20 A. No, sir.

21 Q. And she got 29 days off the
22 payroll; is that right?

23 A. Yes, sir.

1 Q. And isn't it true that
2 Sergeant G. L. Boyd who got written up for
3 being disrespectful and disobeying an
4 order was also demoted from sergeant to
5 firefighter and he also got 29 days of
6 suspension?

7 A. That's correct.

8 Q. So what you recommended for
9 Sergeant Hartwell, former Sergeant
10 Hartwell, is actually less punishment than
11 what Sergeant Boyd got for some of the
12 same actions; is that right?

13 A. Yes, sir.

14 Q. I believe you wanted to
15 elaborate on Lieutenant Johnson. There
16 was some event that Mr. Brannan talked
17 about -- and did you want to elaborate on
18 that or was that the direct order that
19 Sergeant Hartwell had given to another
20 employee?

21 A. Was that Martin?

22 Q. Martin, was that it? I don't
23 know. It was one that you wanted to

1 expand on and Mr. Brannan didn't want you
2 to.

3 A. Well, I'm sorry, I can't --
4 I'm sorry.

5 Q. Well, that's all right. We
6 will move on. What kind of employee was
7 Sergeant Hartwell?

8 A. Sergeant Hartwell is a person
9 who is capable of being a sergeant. He
10 works well on the fire ground. He
11 basically worked well with the firemen
12 under him. Sergeant Hartwell is an
13 intimidating person. Sergeant Hartwell
14 does not like to be told what to do by
15 officers.

16 Q. That's a pretty difficult
17 thing to have in the fire department?

18 A. It is as though he resents
19 being told what to do from people above
20 him.

21 Q. Do you want him driving your
22 fire truck?

23 A. No, sir, not any longer.

1 Q. Do you want him supervising
2 one of your line companies if say a
3 lieutenant or captain is out on a
4 particular shift?

5 A. No, sir -- which is the basis
6 why I recommended the demotion because in
7 the absence of the officer he would be in
8 charge of that company.

9 Q. Was the demotion meant as a
10 punishment for Hartwell or simply because
11 you didn't feel like he possessed the
12 capabilities to be in command of that
13 situation?

14 A. It was not punishment. I did
15 not want him to be in the position to be
16 company officer in the absence of the
17 officer.

18 Q. I want to talk a little bit
19 about this August the 4th incident where
20 Chief Gordon asked then Sergeant Hartwell
21 to bring in a doctor's excuse for having
22 been sick. Am I right to understand that
23 the shift that Hartwell had volunteered to

1 work and that he went home in the middle
2 of was Chief Gordon's shift?

3 A. Yes, sir.

4 Q. Whose responsibility would it
5 have been to write him up or to ask for a
6 doctor's excuse in that situation?

7 A. Chief Gordon.

8 Q. Do you think it was anything
9 out of line by Chief Gordon asking him for
10 the doctor's excuse and staying behind his
11 normal shift to do that?

12 A. No, sir.

13 Q. Mr. Brannan asked you several
14 questions about sick leave and doctor's
15 excuses. Let me ask you this: The
16 firefighter volunteered to work a shift,
17 can he just leave any time he gets ready?

18 A. No, sir.

19 Q. Does it cause a problem if he
20 decides to leave in the middle of that
21 shift?

22 A. It could, yes.

23 Q. And isn't it true that in most

1 occasions where a firefighter is working
2 overtime on a shift it's because there is
3 a vacancy or some engine company or truck
4 company is shorthanded already?

5 A. There's a need. There was a
6 need, yes.

7 Q. And in fact the sick leave
8 policy that we all looked at a little
9 while ago doesn't say that Chief Gordon or
10 any other chief cannot ask for a return to
11 work slip on an employee that had been
12 sick, now doesn't it?

13 A. Yes, sir, that's correct.

14 Q. It just establishes what
15 should be done when sick leave is taken;
16 is that correct?

17 A. Yes, sir.

18 Q. Let me ask you this: If I
19 decide to go join the fire department, do
20 I have to pass a physical test?

21 A. Yes, sir.

22 Q. If I had health problems that
23 mean I can't carry a fire hose or I can't

1 go into a fire, can I be a member of the
2 Montgomery Fire Department?

3 A. The chance is you could not.

4 Q. So does the department have a
5 vested interest in the health of its
6 firefighters?

7 A. Yes.

8 Q. If you've got a firefighter
9 that's sick that shows up for duty on a
10 truck company, do you want that sick
11 firefighter riding that truck?

12 A. No, sir.

13 Q. Does it propose a safety risk
14 to people if you do that?

15 A. Yes, it does.

16 Q. We talked about this Mustard
17 Form that Chief Gordon wrote on Hartwell
18 after the cleaning incident at the fire
19 station. Isn't it true, Chief, that
20 Hartwell was the only one in that station
21 who said no, I'm not going to sign that
22 form?

23 A. Yes, sir.

1 Q. Isn't it true that that's why
2 he was written up?

3 A. Yes, sir.

4 Q. And isn't it true that he was
5 a troublemaker, causing problems on that
6 day in that station?

7 A. Yes, sir.

8 Q. And that's not something new
9 for Hartwell, is it?

10 A. No, sir.

11 Q. How many firefighters do you
12 have under your command?

13 A. Approximately 354.

14 Q. As it regards chain of
15 command, isn't it the real point, Chief,
16 that every time a firefighter has a
17 problem he can't be writing you a memo or
18 writing you a letter because you don't
19 have time to deal with 350 firefighters
20 and their daily complaints?

21 A. Well, the point is -- is that
22 he knows the chain of command and he
23 deliberately -- he was deliberately